

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ANGEL L. MARTINEZ,

Plaintiff,

Civ. Action No.
9:04-CV-0440 (FJS/DEP)

vs.

SCOTT THOMPSON, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

SIVIN, MILLER LAW FIRM
170 Broadway
Suite 600
New York, NY 10038

EDWARD SIVIN, ESQ._

FOR DEFENDANTS:

HON. ANDREW M. CUOMO
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State of New York
615 Erie Boulevard West
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Syracuse, NY 13204-2455

SENATA B. SIUDA, ESQ.
TIMOTHY P. MULVEY, ESQ.
Assistant Attorneys General

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

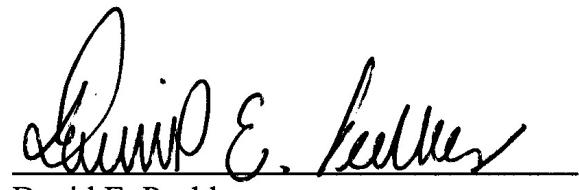
Currently pending before the court in connection with this civil rights action, brought by the plaintiff pursuant to 42 U.S.C. § 1983, is a motion to compel discovery. Dkt. No. 138. In his motion, plaintiff seeks the production of photographs of ten specified corrections workers employed by the New York State Department of Correctional Services (“DOCS”), and that he be furnished copies of those photographs, and additionally requests the identity and photographs of any other corrections personnel known to have been in the special housing unit (“SHU”) at the Oneida Correctional Facility during the specified shifts on February 25 and 26, 2003. Defendants oppose the motion, both on the basis of lack of relevance and additionally asserting prejudice. Dkt. No. 142.

Oral argument was held in connection with plaintiff’s motion during a digitally recorded telephone conference held on June 18, 2008. At the close of the hearing I issued a bench decision granting the motion in part, but otherwise denying it. Based upon the court’s oral decision rendered on June 18, 2008, which decision is incorporated herein by reference, it is hereby

ORDERED as follow:

- 1) Plaintiff's motion to compel discovery (Dkt. No. 138) is GRANTED, in part.
- 2) On or before July 11, 2008 defendants are directed to produce any photographs within their possession, custody or control of DOCS corrections personnel Stevens, Mooney, Conklin, Novel, Frye, Swinbourne, Smith, Morris and Mullen for inspection by the plaintiff and his attorney. Production is to occur at a mutually convenient date and time at an office regularly maintained by the New York State Attorney General in either Syracuse, New York or in New York City, at plaintiff's option.
- 3) Except to the extent indicated in the foregoing paragraph, plaintiff's motion to compel discovery (Dkt. No. 38) is hereby DENIED.
- 4) No costs and attorney's fees are awarded to either party in connection with plaintiff's motion to compel discovery.
- 5) The clerk of this court shall serve this order on the parties in accordance with this court's local rules.

Dated: June 24, 2008
Syracuse, NY



David E. Peebles
U.S. Magistrate Judge